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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JACK STEIN,

Plaintiff,

v.

CLARK COUNTY *et. al.*,

Defendants.

Case No. C02-5097 FDB

AMENDED ORDER DENYING
LEAVE TO PROCEED *IN FORMA*
PAUPERIS

Plaintiff has filed a motion for leave to proceed *in forma pauperis* on appeal of the above entitled civil rights action. The Prison Litigation Reform Act of 1995 ("PLRA"), 28 U.S.C. § 1915, requires that prisoners who bring civil actions or appeals from civil actions must "pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). The filing fee is \$455.00. Prisoners who are unable to pay the full amount of the filing fee at the time that their actions or appeals are filed are generally required to pay part of the fee and then to pay the remainder of the fee in installments. 28 U.S.C. § 1915(b). A court may authorize a petitioner to prosecute an action in federal court without prepayment of fees or security if the petitioner submits an affidavit showing he or she is unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a). The affidavit must include a statement of all assets such prisoner possesses and that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that

1 the person is entitled to redress. 28 U.S.C. § 1915(a)(1). However, prisoners granted leave to
2 proceed IFP remain obligated to pay the entire fee in installments, regardless of whether their action
3 is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); Taylor v. Delatoore, 281 F.3d 844, 847
4 (9th Cir. 2002).

5 A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding
6 without prepayment of fees or security therefor, in addition to filing the affidavit filed under 28
7 U.S.C. § 1915(a)(1), shall submit a certified copy of the trust fund account statement (or institutional
8 equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint
9 or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or
10 was confined. 28 U.S.C. § 1915(a)(2). Using these certified trust account statements, the Court
11 must assess an initial payment of 20% of (a) the average monthly deposit, or (b) the average monthly
12 balance in the account for the past six months, whichever is greater, and collect that amount as the
13 prisoner's initial partial filing fee, unless he has no current assets with which to pay. See 28 U.S.C. §
14 1915(b)(1); 28 U.S.C. § 1915(b)(4); Taylor, 281 F.3d at 850. Thereafter, the institution having
15 custody of the prisoner must collect subsequent payments, assessed at 20% of the preceding month's
16 income, in any month in which his account exceeds \$10, and forward those payments to the Court
17 until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); Taylor, 281 F.3d at 847.

18 The Court finds that Plaintiff has submitted an affidavit that complies with 28 U.S.C. §
19 1915(a)(1) as well as a certified copy of his prison trust account statement pursuant to 28 U.S.C. §
20 1915(a)(2). Plaintiff's trust account statement shows that he has insufficient funds from which to pay
21 an initial partial filing fee.

22 Plaintiff's financial status, however does not end the Court's inquiry. The PLRA also
23 obligates the Court to review notice of appeals filed by all persons proceeding IFP and by those, like
24 Plaintiff, who are "incarcerated or detained in any facility [and] accused of, sentenced for, or
25 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation,
26 pretrial release, or diversionary program," "as soon as practicable after docketing." See 28 U.S.C. §§
27 1915(e)(2) and 1915A(b). Under these provisions, the Court must *sua sponte* dismiss any IFP or
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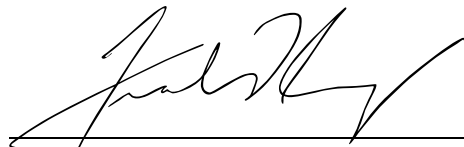
1 prisoner complaint, or any portion thereof, which is frivolous, malicious, fails to state a claim, or
2 which seeks damages from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B); Lopez v.
3 Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000); Resnick v. Hayes, 213 F.3d 443, 446 (9th Cir. 2000).
4 As indicated in the dismissal of Plaintiff's claims, an action for false imprisonment does not lie where
5 plaintiff is found guilty of the offense charged. See, Heck V. Humphrey, 512 U.S. 477 (1984).
6 Plaintiff was convicted on retrial of the same offenses and sentenced to a term of imprisonment that
7 provided full credit of the time served under the original conviction. Accordingly, Plaintiff has not
8 been damaged by the alleged wrongful conduct of Defendants. Accordingly, the appeal lacks an
9 arguable basis in fact and/or law and thus the Court finds that an IFP appeal would not be taken in
10 good faith pursuant to 28 U.S.C. § 1915(a)(3).

11 ACCORDINGLY;

12 IT IS ORDERED:

13 Plaintiff's Application to Proceed *In Forma Pauperis* on Appeal [Dkt #68] is **DENIED**. The
14 Court certifies that the notice of appeal is not taken in good faith.

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17 DATED this 6th day of August, 2007.

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22 FRANKLIN D. BURGESS
23 UNITED STATES DISTRICT JUDGE
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